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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8
9 UNITED STATES OF AMERICA,)
10 Plaintiff,) 2:12-cr-00254-JCM-RJJ
11 vs.)
12 ALBERT SILVA HERNANDEZ,) **AMENDED STIPULATION TO**
13 Defendant.) **CONTINUE TRIAL DATE**
14 _____) (First Request)
15

16 **IT IS HEREBY STIPULATED AND AGREED**, by and between Daniel G. Bogden,
17 United States Attorney, and Nancy J. Koppe, Assistant United States Attorney, counsel for the United
18 States of America, and Michael V. Castillo and Michael L. Becker, counsel for defendant Albert Silva
19 Hernandez, that the trial in the above-captioned matter currently scheduled for Monday, September
10, 2012, at the hour of 9:00 a.m., be vacated and continued to Monday, December 3, 2012.

20 This Stipulation is entered into for the following reasons:

21 1. Counsel for defendant is expected to be engaged in two jury trials in the Eighth
22 Judicial Court - *State of Nevada v. Aaron Hairston*, Case No. 279119, commencing on September 10,
23 and *State of Nevada v. Paul Lowdon*, Case No. C280536, commencing on September 17, 2012.

24 2. The defendant is incarcerated and does not object to the continuance sought
herein.

25

3. Counsel for defendant needs more side to continue negotiations with the United States.

4. Counsel for both sides agree to withdraw the stipulation filed as Document 16 and submit this stipulation instead. Counsel asks this Court to substitute the order attached to this stipulation for Document 17, as the order attached to this stipulation contains corrected citations to the Speedy Trial Act.

5. The additional time requested herein is not sought for purposes of delay, but merely to allow time for counsel for defendant to work on previously-scheduled trials, and to continue negotiations, taking into account the exercise of due diligence.

6. Denial of this request for continuance would not allow counsel for defendant the opportunity to work on previously-scheduled trials and to continue negotiations, taking into account the exercise of due diligence.

7. Additionally, denial of this request for continuance could result in a miscarriage of justice.

8. The additional time requested by this Stipulation is excluded in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161(h)(7)(A), considering the factors under Title 18, United States Code, Sections 3161 (h)(7)(B)(i) and 3161 (h)(7)(B)(iv).

This is the first request for continuance filed herein.

DATED this 11th day of September, 2012.

DANIEL G. BOGDEN
United States Attorney

/s/ Michael V. Castillo
MICHAEL V. CASTILLO
MICHAEL L. BECKER
Counsel for defendant HERNANDEZ

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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FINDINGS OF FACT

Based on the pending Stipulation of counsel and the defendant, and good cause appearing therefore, the Court finds that:

18 1. Counsel for defendant is expected to be engaged in two jury trials in the Eight
19 Judicial Court - *State of Nevada v. Aaron Hairston*, Case No. 279119, commencing on September 10,
20 2012, and *State of Nevada v. Paul Lowdon*, Case No. C280536, commencing on September 17, 2012.

21 2. The defendant is incarcerated and does not object to the continuance sought
22 herein.

23 3. Counsel for defendant needs more side to continue negotiations with the United
24 States.

25 4. Counsel for both sides agree to withdraw the stipulation filed as Document 16
26 and submit this stipulation instead. Counsel asks this Court to substitute the order attached to this

stipulation for Document 17, as the order attached to this stipulation contains corrected citations to the Speedy Trial Act.

5. The additional time requested herein is not sought for purposes of delay, but merely to allow time for counsel for defendant to work on previously-scheduled trials, and to continue negotiations, taking into account the exercise of due diligence.

6. Denial of this request for continuance would not allow counsel for defendant the opportunity to work on previously-scheduled trials and to continue negotiations, taking into account the exercise of due diligence.

7. Additionally, denial of this request for continuance could result in a miscarriage of justice.

8. The additional time requested by this Stipulation is excluded in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161(h)(7)(A), considering the factors under Title 18, United States Code, Sections 3161 (h)(7)(B)(i) and 3161 (h)(7)(B)(iv).

9. This is the first request for continuance filed herein.

For all of the above-stated reasons, the ends of justice would best be served by a continuance of the trial date.

CONCLUSIONS OF LAW

Based on the facts that counsel for defendant needs more time to work on previously-scheduled trials and continue work on negotiations, the failure to grant said continuance would be likely to result in a miscarriage of justice.

The Court finds that the additional time requested by this Stipulation is excluded in computing the time within which the trial herein must commence pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161(h)(7)(A), considering the factors under Title 18, United States Code, Sections 3161 (h)(7)(B)(i) and 3161 (h)(7)(B)(iv).

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ORDER

IT IS THEREFORE ORDERED that the trial currently scheduled for September 10, 2012, at the hour of 9:00 a.m., be vacated and continued to December 3, 2012, at the hour of 9:00 a.m., in Courtroom 6A.

IT IS FURTHER ORDERED that the calendar call currently scheduled for September 5, 2012, at the hour of 1:30 p.m., be vacated and continued to November 28, 2012, at the hour of 9:00 a.m., in Courtroom 6A.

IT IS FURTHER ORDERED that the stipulation in Document 16 is withdrawn and the Court's prior order, Document 17, is vacated.

DATED September 19, 2012.

Xenia C. Mahan
UNITED STATES DISTRICT JUDGE